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January 10, 2014

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
January 10, 2014
Part of
Public Record

Re: *Norfolk Southern Railway Company – Abandonment Exemption – In
Marietta, Lancaster County, PA,
STB Docket No. AB-290 (Sub-No. 328X)*

Dear Ms. Brown:

By way of this letter filing, Norfolk Southern Railway Company (“NSR”) respectfully urges the Board to accept and grant NSR’s late-filed (by less than two weeks) request for an extension of the deadline for giving notice of abandonment consummation in the above-docketed proceeding. For the reasons supplied below, NSR asks that the consummation notice deadline in this case be extended until December 30, 2014.

By way of background, on December 30, 2011, the Surface Transportation Board served and published notice of NSR’s invocation of the abandonment class exemption procedures to abandon a 2-mile rail line extending from milepost MU 83.9 (near S. Bridge Street) to milepost MU 85.9 (south of the intersection of Railroad Ave. and Old River Road), in the Borough of Marietta, Lancaster County, Pennsylvania. Because the Board did not impose any conditions that are barriers to consummation, NSR had until December 30, 2012, to give notice of consummation or to request an extension of the consummation notice deadline pursuant to the requirements of 49 C.F.R. § 1152.29(e)(2).

On January 28, 2013, NSR filed a letter requesting a one-year extension of its abandonment authority. The request was late-filed, but it explained that the lateness stemmed from a variety of circumstances, including, among others, a misunderstanding as to the pertinent procedural deadline. In light of these circumstances, and for good cause given, the Board graciously accepted the one-month-delinquent January 28, 2012 extension request, and, in an April 3, 2013 Director’s Order, the Board granted an extension until December 30, 2013.

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To date, NSR has not consummated abandonment of this rail line. NSR still plans on fully abandoning the line in accordance with the Board's salvage conditions, but it cannot undertake salvage at this time, nor does NSR anticipate being in a position to commence salvage activity until warmer weather returns to that part of the NSR system. NSR acknowledges that, under the circumstances, it should have sought another extension of its abandonment authority by no later than December 30, 2013 (not quite two weeks ago), and preferably, in the interest of courtesy, should have done so sooner than that. But, due to the distractions of the intervening Christmas and New Year's holidays, and lingering confusion concerning the duration of the Board's April 3, 2013 extension decision (which those handling the matter for NSR mistakenly had measured from the date of that decision, rather than from December 30, 2012), NSR has just discovered that it has missed the applicable deadline. Also, NSR's outside counsel experienced recent support staff changes in 2013, including the departure of two legal assistants who had, in succession, been assigned to handle the procedural updates for NSR abandonments before the Board. This staffing turnover contributed to missing the subject deadline by a matter of days.

Again, NSR acknowledges that the correct consummation notice deadline in this case was December 30, 2013, which has passed. NSR understands, however, that, in the presence of adequate justification, the Board may waive strict enforcement of the section 1152.29(e)(2) notice deadline (as it has done before), and believes that it may be willing to do so here. NSR has here offered candid explanations for the oversight that may allow the Board to forgive the missed deadline as it has done in the past, especially considering the brief interval between the actual December 30, 2013 deadline and the January 10, 2014 date of this extension request.¹

Please let me know if I can be of any further assistance in this matter or if you have any questions concerning the foregoing waiver request.

Sincerely,



Robert A. Wimbish
Attorney for Norfolk Southern
Railway Company

cc: Maquiling Parkerson, Marc Kirchner

¹ Although perhaps not central to the Board's consideration of the matter, NSR submits that no interested party would be prejudiced or otherwise harmed by Board acceptance and action upon NSR's extension request at this time.